1	Draft Language to Amend Education Harassment Statutes
2	
3	Sec 16 V.S.A. § 11 is amended to read:
4	§ 11. CLASSIFICATIONS AND DEFINITIONS
5	(a) As used in this title, unless the context otherwise clearly requires:
6	* * *
7	(26)(A) "Harassment" means an incident or incidents of verbal, written,
8	visual, or physical conduct, including any incident conducted by electronic
9	means, based on or motivated by a student's or a student's family member's
10	actual or perceived race, creed, color, national origin, marital status, sex,
11	sexual orientation, gender identity, or disability that has the purpose or effect
12	of objectively and substantially undermining and detracting from or interfering
13	with a student's educational performance education or access to school
14	resources or creating an objectively intimidating, hostile, or offensive
15	environment.
16	* * *
17	(C) Notwithstanding any judicial precedent to the contrary, the
18	conduct described in this subdivision (a)(26) need not be severe or pervasive to
19	constitute harassment. In determining whether conduct constitutes harassment:

1	(i) The determination shall be made on the basis of the record as a
2	whole, according to the totality of the circumstances, and a single incident may
3	constitute harassment.
4	(ii) Incidents that may be harassment shall be considered in the
5	aggregate with varying types of conduct and conduct based on multiple
6	characteristics viewed in totality, rather than in isolation.
7	(iii) Conduct may constitute unlawful harassment, regardless of
8	whether:
9	(I) the complaining student is the person being harassed;
10	(II) the complaining student acquiesced or otherwise submitted
11	to or participated in the conduct:
12	(III) the conduct is also experienced by others outside the
13	protected class involved in the conduct;
14	(IV) the complaining student was able to continue the student's
15	education or access to school resources in spite of the conduct;
16	(V) the conduct resulted in a physical or psychological injury;
17	or
18	(VI) the conduct occurred outside the complaining student's
19	school.

1	(iv) Behavior that a reasonable person with the same protected
2	characteristic would consider to be a petty slight or trivial inconvenience shall
3	not constitute harassment pursuant to this subdivision (a)(26).
4	* * *
5	Sec 16 V.S.A. § 570f is amended to read:
6	§ 570f. HARASSMENT; NOTICE AND RESPONSE
7	* * *
8	(c) To prevail in an action alleging unlawful harassment filed pursuant to
9	this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the
10	following:
11	(1) The that the student was subjected to unwelcome conduct based on
12	the student's or the student's family member's actual or perceived membership
13	in a category protected by law by pursuant to 9 V.S.A. § 4502.
14	(2) The conduct was either:
15	(A) for multiple instances of conduct, so pervasive that when viewed
16	from an objective standard of a similarly situated reasonable person, it
17	substantially and adversely affected the targeted student's equal access to
18	educational opportunities or benefits provided by the educational institution; or
19	(B) for a single instance of conduct, so severe that when viewed from
20	an objective standard of a similarly situated reasonable person, it substantially

- 1 and adversely affected the targeted student's equal access to educational
- 2 opportunities or benefits provided by the educational institution.
- 3

\* \* \*